

City of Boulder
Agreement with the Boulder Police Benefit
Association
1999/2000 Collective Bargaining Agreement
(Selected Areas)

I. **Term of Agreement**

- A. The non-economic terms of this Agreement, excluding only those portions which have either direct or indirect cost to the City, shall be in effect beginning the first pay period of 1999 and shall continue through the last pay period of 2001, and from year-to-year thereafter, unless during February of 2001 or of any given year thereafter either the City or BPBA shall serve to the other written notice of a desire to modify this Agreement, in which event good faith negotiations concerning the modifications shall commence no later than April 15.
- B. The economic terms of this Agreement, including only those that have either a direct or indirect cost to the City, shall be in effect beginning the first pay period of 1999, and shall continue through the last pay period of 2000, and from year-to-year thereafter, unless during February of any given year either the City or BPBA shall serve to the other written notice of a desire to modify this Agreement, in which event good faith negotiations concerning the modifications shall commence no later than April 15.
- C. If any provision of this Agreement is found to be in conflict with any State, Federal, or Municipal statute, court ruling, or administrative authority, it shall be declared null and void and no longer in effect. Such language shall then be subject to good faith renegotiation by the City and the Bargaining Unit. Should negotiations produce an increase in direct or indirect costs to the City, such costs shall automatically be included as a part of the economic settlement of the next regularly scheduled contract negotiations. All other provisions of the Agreement shall remain in full force and effect for the duration of the Agreement.

IV. **Agency Shop**

- A. All employees covered by this Agreement, who decline membership in the BPBA shall at the end of thirty (30) days following the date of their hire, begin a monthly payment of money equal to the amount paid of dues paid by BPBA members, as declared in the Article XXXII., "Check-Off".

A special fund entitled Boulder Police Benefit Association Surviving Spouse and Children's Fund shall be established by the BPBA and all money contributed, as indicated above, shall be placed in this Fund and used for no other purposes than the Surviving Spouse and Children's Fund, which may include a death benefit and educational assistance to dependents of BPBA members killed or injured in the line of duty. A record of all money paid to and from this Fund shall be maintained by the BPBA and any employee contributing money to this Fund shall have the right to periodically view its financial record.

- B. It shall be a condition of employment that all employees covered by this Agreement shall either become members of the Boulder Police Benefit Association or contribute to the Surviving Spouse and Children's Fund, as described in section A. of this article.
- C. Upon submission of proper proof of bona fide religious convictions based on tenets or teachings of a church or religious body of which an employee is a member, the Human Resources Director shall declare the employee exempt from becoming a member of the BPBA. Such employee shall pay an amount of money equivalent to regular BPBA dues and assessments to the BPBA treasurer. Nonpayment of this money subjects the employee to the same penalty as if it were nonpayment of dues. The BPBA shall contribute an equivalent amount of money to a charity of its choice not affiliated with a religious, labor, or employee organization. The BPBA shall submit proof of contribution to the Human Resources Director.
- D. Employees otherwise eligible for inclusion in the bargaining unit, as outlined in this Agreement, shall be free to join or refrain from joining BPBA and shall not be coerced by either party to this Agreement.

VIII. Strikes and Lockouts

The City agrees that so long as this Agreement is in effect, there shall be no lockouts. The closing down of City operations or any part thereof or curtailing any operations shall not be construed to be a lockout.

BPBA, its officers, agents, members, and employees covered by this Agreement agree that so long as this Agreement is in effect, there shall be no strikes, sitdowns, slowdowns, stoppages of work, boycotts, or any unlawful acts that interfere with the City's operations. BPBA shall exercise due diligence to end any strike that may occur in violation of this article.

IX. Layoff and Recall Procedures

A. Layoff Procedure

1. The City shall at its sole discretion determine when the layoff of employees is required. When layoffs are required, individual employee performance and seniority shall be the primary considerations in determining those employees to be displaced.
2. In the event layoff becomes necessary, the Chief of Police shall determine those employees whose performance has been substandard, as reflected by the employee evaluation and rating system, over the past two (2) consecutive evaluation periods and those employees shall be the first to be displaced according to a priority established by the Chief of Police.
3. In the event there are no employees or an insufficient number of employees laid off in the above matter, the displacement shall continue according to relative seniority beginning with the most recently hired employee.

B. Recall Procedure

1. Recall from layoff shall be in reverse order of layoff with the last employee displaced to be the first recalled back to work.
2. Notice of recall from, layoff shall be by return receipt requested mail or telegram. An employee so notified or contacted by phone shall have three (3) days to report back to work unless a reason, satisfactory to the City, is given during the three (3) day period. However, it is understood that an employee who is working for another employer at the time of recall shall be allowed to work out a fourteen (14) calendar day notice provided she/he notified the City within the three (3) day period specified above.
 - a. In the event a laid off employee, who has been employed outside the City, is unable to return to work within the prescribed period, she/he may upon reasonable proof of such difficulty decline recall at the time.
 - b. An employee who declines recall, as indicated above, will retain his/her relative seniority position and may be recalled, as necessary, in the future.
 - c. An employee may so decline recall on only one (1) occasion.

- d. When an employee declines recall, the City will proceed to the next individual scheduled for recall and notify him/her of the opportunity to return to work.
- e. Should all laid off employees decline their opportunity for recall, the City will proceed through the recall list until it reaches the most junior employees necessary to fill recall needs; these employees will be required to return to work or give up all further rights to re-employment with the City.
- f. This process will continue back through the recall list until all recall needs are met.
- g. If contact, as defined in subsection 2. Above, is not made within five (5) calendar days, the City may contact the next senior laid off employee to fill the available opening. An employee bypasses in this matter shall become the senior employee next eligible for recall.
- h. If a laid off employee refuses recall or fails to report as agreed, she/he will thereby waive all further consideration for reinstatement.
- i. Employees rehired under these provisions shall not be required to meet additional minimum requirements for employment greater than those in existence at their initial date of hiring.
- j. Employees re-employed under these provisions shall begin accruing benefits at the level they had attained prior to displacement. Rehired employees shall also be credited prior service time for the purpose of determining pension eligibility.

C. Supervisory Displacement

Should supervisory employees be returned to the bargaining unit, they shall assume a position among patrol officers according to their continuous, uninterrupted service in the Department.

D. Maintenance of Benefits

If allowed by the insurance carrier, employees laid off from the City may retain whatever group insurance programs they had at the time of layoff by converting to a private plan and by assuming the total cost of each benefit.

X. Management Rights and Responsibilities

- A. All employer rights, functions, responsibilities, and authority not specifically and expressly limited by this Agreement are retained by the City.

In matters not specifically covered by language within this Agreement, the City shall have the clear right to make unlimited decisions in such areas, except as provided in section B. of this article, and such decisions shall not be subject to the grievance procedure.

- B. The City shall seek, consider, and respond to recommendations from the Executive Staff of the BPBA when establishing, changing, or abolishing departmental rules, regulations, personnel policies and practices, procedures, or directives proposed during the term of this agreement.

XI. Discipline and Discharge

- A. General

1. Employees may be disciplined, if reasonable under the circumstances, in any of the following manners: verbal warning, written reprimand, suspension, demotion, transfer, and/or termination, or in any other manner agreeable to the employee and to the department.
2. Employees should review the terms of this Agreement, all Department orders, rules, and regulations, as well as civil and criminal law for an understanding of some actions that may bring about the imposition of discipline.
3. The definition of “Administrative Investigation” shall be understood to mean: Any time the City initiates an investigation to determine the possibility of, or to establish a basis for disciplinary action, whether such investigation or interrogation is initiated by an internal, external, formal, or informal complaint.
4. Disciplinary action is intended to be corrective rather than punitive, and as such, is intended normally to progress from less to more severe. This shall not be interpreted to limit the City’s authority to impose whatever discipline is warranted by the circumstances under consideration

- B. 1. Disciplinary action shall be divided into two (2) categories: (a) non-serious, and (b) serious.
- a. Non-serious disciplinary action shall be defined as any verbal warning or written reprimand.
 - b. Serious disciplinary action shall be defined as a suspension, demotion, discharge, or transfer for disciplinary reasons.

1. Employees who receive non-serious disciplinary penalties may use Steps 1 through 4 of the Grievance Procedure as described in Article XII., "Grievance Procedure", paragraph B. If the grievance is not resolved, it may not be processed to Step 5, Arbitration, and the Human Resources Director's decision will be final, binding, and subject to no further appeal.

Employees who receive serious discipline may use the grievance to process their appeal through to arbitration according to "Step 5", Article XII., "Grievance Procedure", of this Agreement.

2. In the event an employee is suspended without pay as a disciplinary action, there shall be no suspension of employee benefits, other than wages, for the period the employee is absent from duty. At the time relieved from duty on suspension without pay, the employee shall be informed of the specific duration of such suspension.

B. Disciplinary Investigations

At any time the City determines that it is necessary to examine or investigate events or circumstances that may lead to disciplinary action, at the outset, the employee shall be presumed innocent and the investigation shall be conducted in a fair and impartial manner in accordance with the general guidelines in sections 1. And 2. Below.

The City shall initiate any investigation within fourteen (14) days of the time it has knowledge of such event with the exercise of reasonable diligence.

1. Initial/Informal Investigations

Supervisory personnel may at any time require written reports or meeting with employees to review events, circumstances, or employee's conduct. If the meeting or report is to review a specific allegation against the employee, he/she will be so notified at the outset of the meeting or at the time the report is requested.

Until such time that disciplinary action is the likely outcome of such meetings or reports, employee representation is not required. The employee(s) involved will be provided a copy of any written report or recommendation made as a result of this initial review.

2. If after this informal investigation (described in C. 1. Of this article) the City determines that further investigation is warranted, it shall be conducted according to the following general guidelines.
 - a. Employees shall be given specific notice of any charges that have been/will be filed against him/her and/or of the specific nature of the investigation. Questions will be specifically directed and related to the alleged violation.
 - b. Employees shall be given reasonable notice prior to being required to attend any meetings or hearings held as a part of such investigation.
 - c. Employees shall assist the investigation and shall furnish information and/or give statements, as requested.
 - d. Employees may be represented by BPBA or by legal counsel at any interview or meeting held as a part of such investigation.
 - e. The employee (and representative) shall have the opportunity to review all evidence produced during the investigation upon reasonable notice and as such information becomes available.
 - f. All interviews and/or meetings shall be electronically recorded and all questions shall be “on-the-record”.
- D. Willful misrepresentation of any information presented during interviews conducted under section C. of this article may bring about the imposition discipline.
- E. Dismissal or acquittal of criminal charges shall not preclude disciplinary action.
- F. Submission to polygraph examination shall not be mandatory. Refusal to submit to such examination shall not be grounds for any disciplinary action. Should the member voluntarily agree to submit to such examination, the location and firm conducting the polygraph examination, the subject member(s) shall utilize a different firm. Upon request the member shall be provided an exact copy of all reports and/or graphs complied.

ARTICLE XVI. Workweek

- A. The normal workweek for members is forty (40) hours. This shall not be interpreted as a guarantee of the maximum number of hours per week under conditions which, in the judgment of Management, are necessary for the operation of the Department and the preservation of public safety.
- B. Members shall be paid one and one-half times their regular hourly rate of pay for all overtime hours in excess of the normal workday/workweek, which are authorized by a supervisor.
- C. Members eligible for overtime payment may elect to receive compensatory time equal to one and one-half the hours of overtime worked. Accrual of compensatory time shall not exceed one hundred twenty (120) hours for commissioned members. The Chief of Police may allow an employee to carry in excess of one hundred-twenty (120) hours in specific instances.
 - 1. Upon termination of employment, the amount of accrued and unused compensatory time shall be paid to the member at his/her regular rate of pay averaged over the last three (3) years or at his/her current regular rate of pay, whichever is higher.
 - 2. Upon the death of an employee, a benefit equal to the amount of accrued and unused compensatory time shall be paid at his/her regular rate of pay averaged over the last three (3) years or at his/her current regular rate of pay, whichever is higher, to the beneficiary of the deceased.
 - 3. Any member desiring to use accrued compensatory time may do so unless, in the opinion of the employee's supervisor, such absence would be disruptive to the Department.
- D. All overtime work must be authorized by a supervisor. Overtime work shall be granted to all those desiring such work on as equitable basis as possible. Refusal on the part of the member to accept compensatory time in lieu of pay shall not influence the distribution of overtime.
 - 1. Employees shall be required to work overtime, when necessary, for the fulfillment of departmental operations.
 - 2. Attendance for off-duty training shall not be required unless employees have received a minimum of seventy-two (72) hours notice of the training schedule.
- E. Employees who are required to work on New Year's Day, Thanksgiving Day, or Christmas Day shall be additionally compensated by receiving compensatory time off

equal to one-half the number of regular, straight-time hours they actually work on these three (3) holidays.

F. Patrol Shift Bid Process

Choice of permanent shift assignment and choice of days off shall be based on seniority, as defined in Article XIV., "Seniority", of this Agreement, whenever practical, but allocation and scheduling of the work force shall rest with the Police Chief in accordance with department with departmental operations and policies.

G. Court Appearances

Job related court appearances which cause a member to work in excess of the normal workday/workweek are compensated as follows:

1. The actual time in court is compensated to the nearest quarter hour. Employees shall be compensated for a minimum of one (1) hour court time.
2. One hour of travel time is compensated unless the appearance coincides with a normal shift.
3. Any witness fees paid to a member are endorsed to the Department if the member wants overtime compensation for the appearance.

Court appearances during normal shifts are not eligible for additional compensation.

H. Emergency Call-Back

BPBA employees called back from scheduled vacation or compensatory time off shall be paid their time and one half rate for the first shift they work.

ARTICLE XXXII. Examination of Personnel Files

A. Department or City Personnel Files

A member shall have the right to examine his/her own personnel file or files. At the time any material is placed in the member's personnel file or files by the City or any supervisor, a copy shall be forwarded to the member, unless originated by the member.

B. Supervisory "Working Files"

Supervisory "working" or "daily" files are kept primarily for the purpose of assessing employee performance. Supervisors shall inform employees of any deficiencies in performance or of general problems in a timely fashion with the intent of providing the employee an opportunity to improve his/her performance. "Working" files or "daily" files shall be purged of derogatory materials accumulated during the twelve (12) month rating period at the end of such rating period or when the evaluation

appeal process is completed. Derogatory entries shall be carried over into another rating period for evaluation purposes.

ARTICLE XII. Grievance Procedure

A. In the event of any controversy concerning the meaning or application of any provision of this Agreement, any Department rule, regulation, procedure, policy, directive, or City policy, which affects members of the Police Department, there shall be no suspension of work by such controversy shall be treated as a grievance and be settled in accordance with established grievance proceedings. Grievances within the meaning of the Grievance Procedure shall include the transactions involving employees of transfer, promotion, demotion, layoff, discharge discipline, or of matters concerning the interpretation or application of the particular clauses of this Agreement and about alleged violations of this Agreement. This language shall not be construed to limit the City's authority to develop and apply policies as described in Article X. "Management Rights and Responsibilities".

1. Employees may appeal directly to the Police Chief the promotion of an employee who does not have the minimum qualifications of a position as it was posted or an involuntary transfer as defined in Article XV., "Transfer Procedure", section C.

If the grievance is not resolved at this Step of the grievance procedure, it may not be appealed to arbitration but may be appealed to the Human Resources Director who shall make final determination of the matter.

2. Any employee who wishes to file a grievance must do so individually and all such grievances shall be processed individually. However, the BPBA and the City may upon mutual written agreement combine groups of like grievances or allow the BPBA to file a grievance on behalf of a group of employees regarding a specific issue.
3. Grievances may only be filed for specific cause and as a result of specific actions of management.
4. At any step of this grievance procedure, BPBA shall have final authority to decline representation to an employee if, in the judgment of BPBA, his/her grievance lacks merit or justification under the terms of this Agreement, or has been adjusted or settled to the satisfaction of the BPBA.

B. Every attempt shall be made to resolve employee differences with regard to the above areas of controversy. So that the expression of such differences is guaranteed and may proceed in an orderly manner, the following procedures shall be followed:

Step 1. The complaint shall be taken by the employee to the employee's immediate supervisor and/or the supervisor who initiated the action causing the complaint within seven (7) calendar days, excluding holidays, of the problem. However, should the occurrence be of such nature that it is not reasonable to assume the employee should have been aware it was a grievable matter, a grievance may be submitted, up to a maximum of thirty (30) calendar days of occurrence. The employee(s) may present only their personal grievance. If possible, the matter should be settled at this stage through discussion.

Step 2. If the complaint is not settled, it shall be reduced, in writing on Grievance Forms or in the format provided by the City. Grievance Forms shall be signed by the employee and shall also be endorsed by a member of the BPBA Executive Staff. The grievance shall then be presented, within seven (7) calendar days, excluding holidays, of the discussion in "Step 1," to the employee's after receipt of the grievance. A copy of all grievances shall be sent by the Bargaining Unit to the Human Resource Director within prescribed time limits. Such grievances may not be amended in any material or substantive manner except for minor additions or deletions which are supportive of and not in addition to the original grievance. After a grievance has been answered by the Police Chief, it may not be changed in any way thorough the remainder of the procedure, except by mutual agreement of the parties.

Step 3. The commander's decision may be appealed, in writing, and signed by the employee within seven (7) calendar days, excluding holidays, to the Police Chief, who will investigate the matter. The BPBA Grievance Committee may investigate the grievance at the employee's request. The Police Chief shall render his/her decision, in writing, to the employee and the BPBA Grievance Committee, within seven (7) calendar days, excluding holidays, of the receipt of the grievance.

Step 4. Appeal of the Appeal of the decision of the Police Chief or appeal of any disciplinary action may be made, in writing, to the Human Resource Director by the employee, BPBA Grievance Committee or both, within seven (7) calendar days, excluding holidays, after receipt of the Police Chief's decision. The Human Resource director shall review all events associated with the cause of the grievance and if either the grievant so requests or the Human Resource Director deems necessary an administrative hearing shall be held on the issue. At such hearing when possible, witnesses may be introduced by the grievant or called by the Human Resource Director. In addition, the Human Resource Director may request information or investigate the grievance in any other manner she/he deems necessary. Such hearing shall be held within ten (10) calendar days, excluding holidays, following the date the appeal was received. The BPBA Grievance Committee may investigate the Grievance at the employee's request. The Human Resources Director's decision, or the decision of his/her designate, shall be rendered, in writing, to the employee within ten (10) calendar days, excluding holidays, following the date the appeal was received or the hearing was held.

If the Human Resource Director is unable to hear the grievance, a mutually acceptable designate may be named. That designate will normally be an Assistant City Manager or a City Department Head and will have full authority, equivalent to that of the Human Resource Director, for this step of the grievance.

Step 5. In the event of failure of the parties to settle a grievance at the 4th Step of the grievance procedure, such grievances, excluding those pertaining to the appeal of non-serious disciplinary action as defined in Article XI., “Discipline and Discharge”, section B., of this Agreement may be appealed to arbitration. The executive board of the BPBA shall have the exclusive right to determine whether or not the employee’s grievance shall be submitted to arbitration. A written notice of such appeal shall be given to the Human Resource Director by BPBA President, his/her designate, or the individual involved. Cases not appealed to arbitration within seven (7) calendar days, excluding holidays, from the date of the final answer given at Step 4, shall be considered settled on the basis of said answer.

- C. The parties shall select a mutually satisfactory arbitrator from the panel of five (5) possible arbitrators submitted by the American Association. Upon receipt of such panel, representatives of the City and BPBA shall strike in alternate turn, with the City striking first, one of the names of the panel until four (4) names have been so struck, whereupon the arbitrator whose name remains shall be deemed the arbitrator selected by mutual agreement of the parties.
- D. The arbitrator shall have the right to arbitrate grievances concerning the interpretation and application of this Agreement.
- E. The arbitrator shall have no power to add to or subtract from or modify any of the terms of this Agreement or any agreements made supplementary hereto, nor any other matter not specifically provided for within the Agreement. The parties shall endeavor, whenever possible, to stipulate the facts included in the case prior to the opening of the arbitration hearing.
- F. The decision of the arbitrator shall be final and binding upon the Bargaining Unit and the City.
- G. All costs of the arbitrator and the arbitration procedure shall be shared equally by both parties.
- H. Upon the acceptance of an answer from the City in any step of the Grievance Procedure, the issue will be considered resolved and not subject to any further appeal. Acceptance shall be in writing.
- I. Time Limits

1. Should the immediate supervisor or the supervisor who initiated the action causing the grievance fail to respond within seven (7) calendar days, excluding holidays, the grievance will automatically proceed to Step 3.
2. Upon the failure of the grievant or of the Police Chief or Human Resources Director to follow each step of this grievance procedure or to adhere to the time limits as described in each step (except as waived by mutually agreed upon written terms) the grievance shall be considered abandoned and resolved in favor of the party still in compliance.

The fact that such a decision or action has a long-term or continuing impact will not in any way extend, or modify this seven (7) day time limit in which a grievance must be filed.

- J. In reviewing a grievance, the reviewing authority may either affirm the last previous decision or render a decision more favorable or less severe to the grievant.

However, nothing contained herein shall preclude a compromise settlement acceptable to both parties.

The issue of whether or not a decision is less favorable or more severe than a previous decision may not itself become the subject of a grievance but may mean that the original grievance is appealed to the next step of the Procedure.

- K. Grievance decisions shall not be interpreted to change the meaning of this Agreement.

- L. Time limits stipulated under this procedure may only be extended by written agreement of both parties.

Steps 1 and/or 2 of the grievance procedure may be bypassed upon written agreement of both parties.

- M. Items settled through the grievance procedure may be admitted as evidence during arbitration in order to attempt to establish precedents; however, the arbitrator shall be free to determine the applicability of such settlements and shall not be bound to similar rulings except as she/he sees fit.

- N. All costs of a court stenographer or other transcription fees shall be paid by the party desiring such service. Upon mutual agreement the cost shall be shared equally by the parties.

- O. Employees may be represented by a Bargaining Unit official and/or legal counsel at any step of this grievance procedure.

P. Grievances may also be filed by Management or BPBA with the other party for, but not limited to, the following reasons:

1. Matters concerning the interpretation or application of the particular clauses of this Agreement.
2. Abuse of the collective bargaining process and understanding of the contract.